

Decision of the Dispute Resolution Chamber

passed on 7 July 2023

regarding an employment-related dispute concerning
the player Roderick Alonso Miller Molina

COMPOSITION:

Frans de Weger (the Netherlands), Chairperson
Khadija Timera (Senegal), Member
André dos Santos Megale (Brazil), Member

CLAIMANT / COUNTER-RESPONDENT:

Roderick Alonso Miller Molina, Panama
Represented by Manuel Díaz Bultrón

RESPONDENT / COUNTER-CLAIMANT:


Almina'a Sports Club 1931, Iraq
Represented by Taaziz Football Law Agency

INTERVENING PARTY:

Turan Tovuz FK, Azerbaijan

I. Facts of the case

1. On 9 August 2022, the Panamanian player, Roderick Alonso Miller Molina (hereinafter: *the player*) and the Iraqi club, Alminaa Sport Club (hereinafter: *the club*) concluded an employment contract (hereinafter: *the contract*), valid as from 15 September 2022 until 15 July 2023.
2. In accordance with clause 4 of the contract, the club undertook to pay to the player – *inter alia* – the following remuneration:
 - USD 40,000 as sign-on fee;
 - USD 7,000 as monthly salary payable by the 15th day of the relevant month.
3. Between September and November 2022, the player's agent sent communications to the club via *Whatsapp*, requesting the club to comply with its financial obligations towards the player.
4. On a non-specified date, the club posted the following text in its official Facebook account:

<p>Press release from the club</p> <p>Al-Mina'a Sport Club 1931, The Interim Board</p> <p>The Interim Board of Al-Mina'a Sport Club condemns the disgraceful and irresponsible acts by some members of sports community in Basra Governorate, specially inside Al-Mina'a Sport Club for resource to tribes (Tribal raids), or to some people who falsely claim to be members of some jihadi parties for threatening The Interim Board and the chairman of the club, who in turn decided to suspend all sports activities for two days as a condemnation of such acts. The Board will seek judicial procedures against whoever will perform these acts. will be filed against them according to Article 2 of anti-terrorism law No.13 of 2005. We hope that our respectful tribes and Jihadi parties not to adapt these kinds of shameful acts that are extraneous to our sport community.</p>	<p> نادي الميناء الرياضي 1931 Al-Mina'a Sport Club</p> <p>بيان من الهيئة الادارية المؤقتة لنادي الميناء الرياضي تستنكر الهيئة الادارية المؤقتة لنادي الميناء الرياضي التصرفات المشينة والعير مسؤولة من بعض المحسوبين على الوسط الرياضي في محافظة البصرة وتحديداً في نادي الميناء وذلك من خلال اللجوء الى العشائر (الكوامة العشائرية) او الى بعض الاشخاص ممن يدعون انتمائهم الى بعض الاحزاب المجاهدة والتي بالتاكيد برينة منهم لما تملكه من عمق جهادي كبير عبر تهديد رئيس واعضاء الهيئة الادارية المؤقتة في النادي والتي بدورها قررت تعليق كافة الانشطة الرياضية لمدة يومين استنكاراً لهذه التصرفات وسيتم اللجوء الى القضاء واتخاذ كافة الاجراءات القانونية بحق كل من تسول له نفسه القيام بمثل هذه التصرفات اياً كانت صفته وسيتم تحريك شكوى بحقهم وفق المادة 2 من قانون مكافحة الارهاب رقم 13 لسنة 2005 املين من عشائرتنا المحترمة و احزابنا المجاهدة عدم الاستماع وتبني مثل هكذا تصرفات معيبة ودخيلة على مجتمعا الرياضي.</p>
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5. On 7 November 2022, the player's house in Panama was seized and sold at public auction due to the player's non-payment of the relevant mortgage.
6. On 1 December 2022, the player returned to his home country.
7. By means of its letter dated 8 December 2022 (wrongly referred to by the player as the notice of 13 December 2022), the player put the club in default of payment in the amount of USD 21,000, corresponding to 3 monthly salaries (September, October and November 2022), thereby granting the club a deadline of 15 days to cure its breach.
8. On 22 March 2023, the player and the Azerbaijani club, Turan Tovuz FK (hereinafter: *the new club*) concluded an employment contract (hereinafter: *the new contract*), valid as from 20 March 2023 until 30 June 2023, whereunder the new club undertook to pay to the player a total fixed amount of USD 12,000.

II. Proceedings before FIFA

a. Position of the player

9. On 17 January 2023, the player lodged a claim against the club before the FIFA Football Tribunal, requesting to be awarded outstanding remuneration and compensation for breach of contract in the total amount of USD 71,534 (no interest requested), broken down by the player as follows:

Outstanding remuneration: USD 21,000

- USD 21,000 corresponding to the salaries payable between September and November 2022 (3 salaries).

Compensation for breach of contract: USD 50,534

- USD 49,000 corresponding to the residual value of the contract, *i.e.* the salaries payable between December 2022 and June 2023 (7 salaries);
 - USD 1,534 corresponding to the flight ticket's expense to return to his home country (Iraq – Panama ; note: supporting document provided).
10. In his claim, the player argued that, despite having put the club in default of payment, the latter failed to comply with its financial obligations, reason why he had no alternative but to terminate the contract. In this respect, while referring to his default notice of 8 December 2022, the player argues having terminated the contract with just cause *cf.* art. 14bis RSTP.

11. As for his departure from Iraq on 1 December 2022, the player argues that the board of directors and the president of the club were receiving threats by radical groups in Iraq, which the player considers as proven by the announcement posted by the club on its Facebook account (see point 4 *supra*). In this respect, the player explained that said threats created an environment of *"instability and insecurity"* in the club that triggered his departure from the country.

b. Position of the club

12. On 27 January 2023, the club lodged a claim against the player in front of the FIFA Football Tribunal, requesting to be awarded compensation for breach of contract in the total amount of USD 300,000 (no interest requested), broken down by the club as follows:

- USD 100,000 corresponding to *"the value of the contract in full"* (note: no further explanation provided);
- USD 200,000 as *"compensation to Al-Minaa Club for the malfunction and damage to the club as a result of financial losses with advertisers and the negative impact on public attendance"*.

13. In its claim, the club argued – *inter alia* – the following:

- That the club *"has been affected by the behavior of this Panamanian player financially, morally and technically, and because Al-Mina Club feels that the player is evading confirming the implementation of his contractual obligations in order to search for a new contract with another club outside Iraq, taking advantage of the upcoming winter transfers (2023)"*.
- That the club paid all the player's financial dues (note: no supporting document provided). In this respect, the club explained that it handed the player's salaries *"to his fellow team captain, the player Ahmed Mohsen to give him the amount immediately after the match, since all the players are in the same hotel, and it is impossible for the club's financial officer to move from one city to another, because the nature of his administrative work prevents him from doing so, and the administration asked the captain"*. In addition, the club held that *"the team asked the player to sign the receipt of the amount as soon as he received the amount according to the accepted procedures"*.
- That the player breached *"the terms of the contract and fled outside Iraq without the approval of Al Mina Club"*.
- That *"the team manager and the team captain contacted the player via WhatsApp and asked him to return and commit to the team, but the player did not respond to these messages and ignored them all"*.

c. Joint procedures in front of the Football Tribunal

14. Considering that both, the claim of the player and the claim of the club, were separately lodged in front of FIFA with a difference of 10 days, both proceedings have been joined under the case no. FPSD-8914 (the present proceedings), for the sake of procedural economy.

d. Player's rejoinder

15. In his reply, the player wished to stress the following aspects:
- That the club only paid to him the sign-on fee, failing to pay any of the monthly salaries due as per the contract, despite the numerous default notices sent. In this respect, the player rejects the argument of the club that it duly met its payment obligations towards him.
 - Furthermore, the player rejected the arguments of the club that it paid him through the team's captain.
 - That he *"was held "hostage" as the club had retained his passport with the purpose of preventing any attempt from any foreign player to leave the country. The only way in which the player could get a hold of it was by begging to club personnel to "lend-it" to make an international transaction as the use of the passport is mandatory"*.
 - That the player was *"complying with his obligations without any salary payments, unable to comply with his financial obligations in his home country as we will refer to later in this document and on top of that, without his personal documentation (passport), in a foreign country"*.
 - That, due to the club's persistent non-payment of the player's salaries, he could no longer pay the mortgage of his house in Panama, with the result that it was seized and sold at public auction on 7 November 2022.
 - That, in addition to all of the above, there were *"the threats made by terrorist groups to the club's directives" which "created an atmosphere of insecurity and contractual instability, contrary to what the Regulations and Status of the Players (RSTP) mandates, which ultimately is unsustainable"*.
 - That the player could not put the club in default of payment until the moment he had left the country, since – had he put the club in default of payment while being rendering services for the club in Iraq – the club would not have authorized him to use his passport and he could have never escaped the country, where he was unpaid and under great insecurity.

- That *"the level of the Damage to our client is at a point that he is unable to continue with his professional career which has taken a toll on his sporting continuity, decreasing his market value, and reducing his possibilities of being called to the national team"*.
- The above being said, the player requested all the argumentation of the club be rejected and reiterated his request for relief.

e. Club's final comments

16. In its reply, the club held, *inter alia*, the following:

- That FIFPRO is present in the Iraq and, nevertheless, the said association has received no complaint from players as to the instability or the insecurity to which the player refers.
- That that the player *"had escaped from the hotel and had requested his passport from the club on the pretext that he wanted to transfer a sum of money to his family"*.
- That the player raised *"many problems"* and deliberately used to hit the members of the team while playing in order to receive red cards, since he wanted his contract be terminated and sign a new contract with a new club.
- The club reiterated that the player's financial dues were handed to the team's captain.
- In addition, the club presented what seems to be a payment receipt in Arabic allegedly signed and fingerprinted by the player, without any translation thereof into one of FIFA's official languages.
- In this context, the club rejected the player's argumentation and reiterated its request for relief.

f. Comments from the new club

17. Despite having been invited to provide its comments, the player's new club failed to do so.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

18. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 17 January 2023 and submitted for decision on 7 July 2023. Taking into account the wording of art. 34 of the March 2023 edition of the Procedural Rules Governing the Football Tribunal (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
19. Subsequently, the members of the Chamber referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (May 2023 edition), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a player from Panama and a club from Iraq, with the intervention of a club from Azerbaijan.
20. Subsequently, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (May 2023 edition) and considering that the present claim was lodged on 17 January 2023, the October 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

21. The Chamber recalled the basic principle of burden of proof, as stipulated in art. 13 par. 5 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Likewise, the Chamber stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties, including without limitation the evidence generated by or within the Transfer Matching System (TMS).

c. Merits of the dispute

22. Its competence and the applicable regulations having been established, the Chamber entered into the merits of the dispute. In this respect, the Chamber started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Chamber emphasised that in the following considerations it will refer only to the facts, arguments and documentary evidence, which it considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

23. The foregoing having been established, the Chamber moved to the substance of the matter and took note of the following events, which the Chamber deemed as *key* undisputed events in the present dispute:

- The club failed to pay his salaries to the player, only paying his sign-on fee;
- The club retained the player's passport, the player needing to tell the person holding his passport at the hotel that he needed it for a monetary transaction in order to obtain it back;
- The club itself posted on its *Facebook* account that members of the club received threats from terrorist groups that led the club to stop its activities during 2 days;
- The player left Iraq on 1 December 2022 without the club's authorization;
- The player put the club in default of payment, *inter alia*, on 8 December 2022, thereby urging the club to proceed with the payment of more than 2 monthly salaries and granting the club a deadline of 15 days to proceed with the relevant payment.

A.) *When did the contractual relationship end?*

24. In view of the allegations of the parties and the documentary evidence on file, the Chamber determined that the contractual relationship came to an end on 1 December 2022, when the player left Iraq to return to his home country, insofar as – as from that moment in time – the player unilaterally decided that he would no longer continue to render his services for the club.

25. In the absence of any previous termination notice or act leading to the conclusion that the contract was terminated by either party before 1 December 2022, the said date shall be considered the date of termination of the contract, concluded the DRC.

B.) *Did the player terminate the contract with just cause?*

26. Considering that, according to the evidence on file, or the absence thereof, it has been sufficiently proven that: 1.) the club failed to pay to the player his salaries since September until November 2022 (the argument of the club that it handed those to the player's captain not being possibly accepted in order to discharge the club from its payment obligations towards the player) despite the player's default notices (via *Whatsapp* and via his correspondence of 8 December 2022); 2.) the club retained the player's passport upon his arrival at the club; 3.) the club going through a situation of insecurity due to threats from terrorist groups that led the club to stopping its activity during 2 days; the DRC concluded that the player – by 1 December 2022 – could no longer rely on the club's compliance with

its contractual obligations and could not be expected to continue in Iraq where his employer club illegally retained his passport, thereby forcing him to stay in an environment that was, in addition and in accordance with the evidence presented, unsafe. Thus, the Chamber decided that the player did terminate the contract with just cause cf. art. 14 of the Regulations on 1 December 2022. In addition, the actions of the club, illegally retaining the player's passport, must be considered as an unacceptable practice, wished to underscore the DRC.

27. Furthermore, the argument of the club that the player wished to terminate the contract in order to sign a new contract with a third club cannot possibly be upheld, insofar as the player remained unemployed until 22 March 2023, *i.e.* during almost 4 months following the termination of the contract at stake.

C.) Can the request of the player to be reimbursed the flight ticket's expenses be accepted?

28. Considering that there is no contractual provision foreseeing the player's entitlement to be awarded any flight ticket from the club or to be reimbursed in any such expense, the DRC decided that the said *petitum* shall be rejected due to the lack of legal basis.

ii. Consequences

29. Having stated the above, the members of the Chamber turned their attention to the question of the consequences of such unjustified breach of contract committed by the club
30. The Chamber observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the player amounts to USD 17,500 (salaries of September (half), October and November 2022).
31. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Chamber decided that the club is liable to pay to the player the amounts which were outstanding under the contract at the moment of the termination, *i.e.* USD 17,500. In addition, the Chamber noted that the player did not request to be awarded any default interest and, therefore, no interest can be awarded to the latter (*ne ultra petita*).
32. Having stated the above, the Chamber turned to the calculation of the amount of compensation payable to the player by the club in the case at stake. In doing so, the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.

33. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.
34. As a consequence, the members of the Chamber determined that the amount of compensation payable by the club to the player had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.
35. Bearing in mind the foregoing as well as the claim of the player, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the contract from the date of its unilateral termination until its end date. Consequently, the Chamber concluded that the amount of USD 52,500 (7.5 salaries: from 1 December 2022 to 15 July 2023) serves as the basis for the determination of the amount of compensation for breach of contract.
36. In continuation, the Chamber verified as to whether the player had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the DRC as well as art. 17 par. 1 lit. ii) of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.
37. Indeed, the player found employment with the new club. In accordance with the pertinent employment contract, the player was entitled to USD 12,000 during the overlapping period of both contracts (the contract and the new contract). Therefore, the Chamber concluded that the player mitigated his damages in the total amount of USD 12,000.
38. Subsequently, the Chamber referred to art. 17 par. 1 lit. ii) of the Regulations, according to which a player is entitled to an amount corresponding to three to six monthly salaries as additional compensation should the termination of the employment contract at stake be due to overdue payables. In the case at hand, the Chamber confirmed that the contract termination took place due to said reason i.e. overdue payables by the club, and therefore decided that the player shall receive additional compensation.
39. In this respect, the DRC decided to award the amount of additional compensation of USD 28,000, i.e. four times the monthly remuneration of the player. In this respect, the DRC determined that, even though the termination of the contract was not made in compliance

with art. 14bis of the Regulations, it was made – *inter alia* – due to overdue payables, which enables the player to receive an additional compensation cf. art. 17.1 lit. ii.) of the Regulations. On this note, the DRC decided to grant four additional salaries considering the club’s retention of the player’s passport, which is a serious violation of the player’s fundamental rights.

40. Notwithstanding the above, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the club must pay the amount of USD 52,500 to the player (i.e. the residual value of the contract, which operates as limit cf. art. 17.1 lit. ii.) of the Regulations), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.
41. Lastly, the Chamber noted that the player did not request to be awarded any default interest in connection with the compensation for breach of contract requested and, therefore, no interest can be awarded to the latter (*ne ultra petita*).

iii. Sporting sanctions

42. In continuation, the Chamber focused on the further consequences of the breach of contract in question and, in this respect, it addressed the question of sporting sanctions against the club in accordance with art. 17 par. 4 of the Regulations. The cited provision stipulates that, in addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract during the protected period.
43. In this respect, the Chamber referred to item 7 of the “Definitions” section of the Regulations, which stipulates *inter alia* that the protected period shall last “*for three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional*”.
44. In this respect, the Chamber took note that the player was born on 3 April 1992 and the relevant contract with the club was concluded on 9 August 2022. Furthermore, the Chamber noted that the player terminated the contract with just cause on 1 December 2022. The breach of contract by the club had therefore occurred within the protected period.
45. Furthermore, the Chamber noted that the club had already been held liable of breaching other players’ contracts without just cause in several recent occasions, in particular in cases FPSD-6723, FPSD-8697 and FPSD-8821.
46. Consequently, the Chamber decided that, by virtue of art. 17 par. 4 of the Regulations, the club shall be sanctioned with a ban from registering any new players, either nationally or internationally, for two entire and consecutive registration periods.

d. Costs

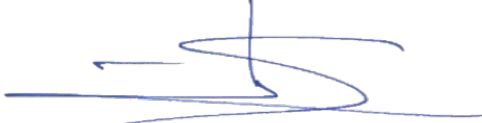
47. The Chamber referred to art. 25 par. 1 of the Procedural Rules, according to which *“Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent”*. Accordingly, the Chamber decided that no procedural costs were to be imposed on the parties.
48. Likewise, and for the sake of completeness, the Chamber recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.
49. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant / Counter-Respondent, Roderick Alonso Miller Molina, is partially accepted.
2. The Respondent / Counter-Claimant, Alminaa Sport Club, must pay to the Claimant / Counter-Respondent the following amount(s):
 - **USD 17,500** as **outstanding remuneration** ;
 - **USD 52,500** as **compensation for breach of contract**.
3. Any further claims of the Claimant / Counter-Respondent are rejected.
4. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
5. The Respondent / Counter-Claimant shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision.
6. If full payment is not made **within 30 days** of notification of this decision, the present matter shall be submitted, upon request of the Claimant, to the FIFA Disciplinary Committee.

7. This decision is rendered without costs.

For the Football Tribunal:



Emilio García Silvero

Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 57 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision.

NOTE RELATED TO THE PUBLICATION:

FIFA may publish this decision. For reasons of confidentiality, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 17 of the Procedural Rules Governing the Football Tribunal).

CONTACT INFORMATION

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